IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5489 OF 2007

Shri Raosaheb Namdeo Patil ...Petitioners
Versus
Shri Vijayasinha krishnarao Deshmukh and ors. ....Respondents

Mr.K.S.Bapat for the petitioners.
Sandeep Patil for respondent no.1.
Mr.V.N.Gangal i/by. Ashok T.Gode for respondent nos.6,7,10 and 11.

CORAM: S.C.DHARMADHIKARI, J.

14th December, 2007.

P.C. :

1. This Writ Petition challenges an Order dated passed by the Assistant Charity Commissioner on 7.7.2007 in which the following directions have been issued by him.

> (1) In exercise of the power vested in me under Govt.Notification under Law and Judicial Dept.No.12674/P/ dt.10/6/75 MPGPT/IVP/ dt.19/6/75 page 457, I Shri. M.K.Dongre, Asstt.Charity Commissioner, Sangli Region, Sangli hereby issue directions to manage the affairs of the Trust and school to the following persons.
>
> (1) Shri Vijaysinha Krishnarao Deshmukh
> (2) Shri Madhukar Bhagwan Kulkarni
> (3) Shri Vidhyadhar Krishnaji Potdar

(4) Shri Gorakhanath Bhau Patil
(5) Shri Prataprao Krishnarao Deshmukh

The above authorised persons with the consultation of the Opponent No.1 i.e. Shri Raosaheb Namdeo Patil to manage the trust and school run by the Trust.

(2) The above persons with the consultation of Opponent No.1 are empowered to take the decision by majority and take necessary action for smooth working of the trust and it's school. The above said persons with the consultation of the Opponent No.1 should work as a caretaker of the Trust and its school till the final decisions in all the pending Change Reports.

(3) The above persons are directed to look after banking affairs of the Trust and its schools.

(4) I hereby appoint the Inspect of this Office Shri. P.G.Bhosale to look after the management of above said persons in order to have check for the smooth working of the Trust.

(5) The above said persons are hereby directed to give their monthly report to Shri P.G.Bhosale. "

2. The application was filed by the first respondent before me and others and was styled as Enquiry No.652 of 2006. The application was filed under Section 41A of the Bombay Public Trust Act, 1950.

3. This matter was argued for sometime and my

attention was invited to Section 41(a) of the Bombay Public Trust Act by Mr.Bapat and decisions of this court. The latest in point of time being the one reported in 2007(1)Mh.L.J. page 48 in the case of Dattatraya s/o. Mahadeo Hiware and Ors. vs. Arjun s/o.Sambhaji Shinde and Ors.

4. The view taken by this court, is that there is no specific power to make appointment of a committee for running of the trust and Charity Commissioner in exercise of the powers under Section 41(a) can issue directions only for proper administration of the trust.

5. It may be that, there is a vacuum on account of the conflicts between the persons who are managing the affairs of the trust. It may be that the trust being an Educational trust, the schools and other educational institutions are suffering adversely. Yet, the Assistant Charity Commissioner could not have directed that the affairs of the trust and school would be managed by authorised persons who are named in this order alongwith the present petitioner.

6. After the judgments of this courts are perused, I see no reason to not to apply the ratio therein to the facts of this case. Even if the smooth and proper administration of the trust requires issuance of certain directions, this court has observed that there are limits which are inherent in the scheme of the Act to the power under Section 41(a). In such circumstances, the order under challenge cannot be sustained. The impugned order is accordingly quashed and set aside. However, this does not prevent the respondent no.1 and others concerned, so also, those interested in the affairs of the trust from seeking appropriate directions in accordance with law so as to ensure smooth, efficient and proper administration and management of the trust. Such, application if made, shall be decided on its own merits and in accordance with law, uninfluenced by the fact that this court has set aside the subject order.

sd/-

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